



File NR: S4-27116  
WR Doc ID: 2283703

## State of Washington REPORT OF EXAMINATION FOR WATER RIGHT APPLICATION

**PRIORITY DATE**  
August 1, 1980

**APPLICATION NUMBER**  
S4-27116

**MAILING ADDRESS**  
West Russell Creek Summer Homes  
Carlos Champie  
230 Shadbolt Rd  
Yakima, WA 98908-9069

**REMARKS:** This water right will be mitigated by a water right held in trust with a pre-1905 priority date.

### Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.06	CFS	3.0

### Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Group Domestic Supply for 6 cabins	0.06		cfs	3.0		Continuous

### Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
YAKIMA	UNNAMED SPRING	RIMROCK LAKE	38 – NACHES

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion 1	13130599992		13N	13E	5	SENE	46°38'51.455"N	121°13'19.108"W
Point of Diversion 2	13130599992		13N	13E	5	SWNE	46°38'49.481"N	121°13'33.143"W

Datum: NAD83/WGS84

### Place of Use (See Attachment 1)

#### PARCELS (NOT LISTED FOR SERVICE AREAS)

Lots 12 through 17 of the West Russell Creek Summer Home Group within Section 4, T. 13 N., R. 13 E.W.M., Yakima County.

### Proposed Works

Applicant has developed catch basins at each of the two springs. Water is then diverted by gravity flow into buried ¾-inch diameter pipelines and flows into two buried 600 gallon capacity storage tanks. Water is then delivered by gravity flow through buried ¾-inch water lines to the six individual summer homes.

## Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Diversion (cfs)

## Provisions

### A. Mitigation

Water use under this authorization is mitigated by a contract between Ecology and the West Russell Creek Summer Homes for an equal or greater amount of the consumptive use (0.12 ac-ft/yr) from trust water rights held by Ecology as part of the Washington State Trust Water Right Program (TWRP).

The Department of Ecology may assign a portion of its trust water to the United States Bureau of Reclamation (USBR)-Ecology Water Storage and Exchange Contract No. 09XX101700 to mitigate for operational impacts to the Yakima Irrigation Project. You shall pay Ecology, as part of your mitigation agreement, for storage and delivery of water under paragraph 15(a) of the exchange contract.

During periods of water shortages, priority calls against the source trust water right providing mitigation for this project may be made. If that priority call for water is found to be valid, water use under this authorization may be temporarily curtailed until the priority call for water ends.

### B. Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

### C. Easement and Right-of-Way

If the water source and/or water transmission facilities are not wholly located upon land owned by the applicant, issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

### D. Water Use Efficiency

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements.

#### **E. Certification**

A temporary permit may issue to appropriate surface water based on the quantities described on Page 1 of this report following the appeal period for this decision, and will remain in permit status through the pendency of the Yakima County Superior Court Adjudication Proceedings *State of Washington v. Acquavella*. A final certificate will issue only after the Court's Final Decree is entered and all matters (i.e. appeals) in the Adjudication Proceedings are settled.

#### **F. Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

#### **G. Fish Screening**

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. See: <http://wdfw.wa.gov/about/contact/>.

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### **FINDING OF FACTS**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-27116, subject to existing rights and the provisions specified above.

### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website: <http://www1.lg.wa.gov/CodeReviser>

Signed at Union Gap, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 Thomas Perkow, Acting Section Manger  
 Water Resources Program  
 Central Regional office

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## INVESTIGATOR'S REPORT

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### BACKGROUND

#### Project Description

On August 1, 1980, Dave Stevens (on behalf of West Russell Creek Summer Homes) filed Application No. S4-27116 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. The applicant proposes to divert an instantaneous rate (Qi) of 0.06 cubic feet per second (cfs). The purpose of use is for 6 cabins year round for indoor domestic supply. On October 14, 2014 Dave Stevens assigned his application to Carlos Champie.

The subject application qualifies for processing as part of Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is selling mitigation to eligible Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the US Bureau of Reclamation (USBR). Ecology's mitigation program may also be used to issue new water rights where appropriate.

The applicant's proposed consumptive use would be mitigated through the purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program based on changes to instream flow and mitigation under CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-00195CTCL(C)sb6 – collectively known as the Bruton Ditch Trust Water Rights. The subject application would therefore be water budget neutral with respect to Total Water Supply Available (TWSA), which is a calculation of the volume of water available to supply water users in the Yakima Basin. Out-of-season and/or carry over impacts to instream flows would be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and the USBR.

**Table 1.** Summary of Application No. S4-27116

<i>Attributes</i>	<i>Proposed</i>
Applicant	Dave Stevens (on behalf of West Russell Creek Summer Homes)
Application Received	August 1, 1980
Instantaneous Quantity	0.06 cubic feet per second
Source	Two Unnamed Springs
Points of Diversion	S½NE¼, Section 5, T. 13 N., R. 13 E.W.M., Yakima County.
Purpose of Use	Group Domestic supply (indoor only)
Period of Use	Year Round
Place of Use	Lots 12 through 17 of the West Russell Creek Summer Homes within the NW¼SW¼, Section 4, T. 13 N., R. 13 E.W.M., Yakima County.

#### Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**

Notice of the proposed appropriation was published in the Yakima Herald Republic on February 20 and 27, 1981. No comments were received during the 30-day comment period.

- **State Environmental Policy Act (SEPA)**

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(g), which states that within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize applications that propose a water budget neutral project as defined in WAC 173-152-020(18) ahead of all other competing applications.

## **INVESTIGATION**

In consideration of this application, Ecology reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was completed on June 27, 2014. Tyson Carlson (Aspect Consulting), Kelsey Collins and Jacqui Metcalfe (Department of Ecology) visited with the applicant to inspect the point of diversion, place of use, and confirm estimates of total and consumptive use.

This project was presented at the Water Transfer Working Group (WTWG) on June 3, 2013. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. The application proposes mitigation with a senior water right held within Ecology's TWRP. A portion of water rights held in trust by Ecology equal to the proposed consumptive use of the cabins would be assigned to the USBR-Ecology Storage Contract. Since the proposed use is upstream of all the water rights Ecology holds in the TWRP, the WTWG reminded Ecology that the mitigation for this project only offsets impacts to TWSA. If flows drop to a point where fish and other aquatic life are affected, then the proposed water use could be curtailed. There were no objections to the project going forward as long as these concerns were considered.

In light of the USBR's withdrawal of all remaining unappropriated waters of the Yakima River – including all tributaries and groundwater in continuity (chapter 90.40 RCW), Ecology consulted with the USBR about new appropriations for cabin owners. The USBR granted a release for these types of projects that are mitigated and water budget neutral with respect to TWSA in a letter dated May 25, 2012.

## Site Description

The proposed points of diversion (POD) are located as follows:

POD 1: located approximately 1554 feet above Rimrock Lake, in the south half of the northeast quarter, Section 5, Township 13 E., Range 13 East of the Willamette Meridian, in the Naches Water Resource Inventory Area (WRIA 38).

POD 2: located approximately 1411 feet above Rimrock Lake, in the south half of the northeast quarter, Section 5, Township 13 E., Range 13 East of the Willamette Meridian, in the Naches Water Resource Inventory Area (WRIA 38).

The applicant has developed catch basins at each of the two springs. Water is then diverted by gravity flow into buried ¾-inch diameter pipelines approximately 100 ft long that convey water into two buried 600 gallon capacity storage tanks. Water is then delivered by gravity flow through buried ¾-inch water lines to the six individual summer homes. Overflow when the two tanks are full returns to the unnamed spring's watercourse immediately below the catch basin.

## Other Water Rights Appurtenant to the Place of Use

There is one other water right located within the proposed place of use for the West Russel Creek Summer Homes (listed in the table below). According to the Conditional Final Order (CFO) issued by the Yakima Superior Court in *The State of Washington, Department of Ecology v. James J. Acquavella, et. al.*, this water right is owned by the East Russell Creek Water Users Association and authorized the continuous use of 0.01 cfs, 2.0 af/yr for group domestic supply for 11 recreational residences.

**Table 2.** Water Rights Appurtenant to the Place of Use

Water Right Document No.	Priority Date	Instantaneous Quantity	Annual Quantity	Purpose of Use	Point of Diversion or Withdrawal
S4-83207-J (East Russell Creek Water Users Assoc.)	July 21, 1949	0.01 cfs	2.0 ac-ft/yr	Group Domestic use for 11 recreational cabins	Unnamed Spring

## Domestic Water Use

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated annual water use by multiplying the gallons per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

The West Russell Creek recreational cabins divert up to 3.0 ac-ft/yr from two springs, but most of the water is overflow at their two storage tanks. The water delivered to each cabin is approximated to be no more than 100 gallons per day for 210 days per year (21,000 gallons per year). Ecology uses the consumptive use calculation defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa) (30% X 21,000 gallons per year = 6,300 gallons/year). Therefore, the



applicant must purchase 0.12 ac-ft/yr to mitigate for the consumptive use for 6 cabins calculated as follows:

$$6,300 \text{ gallons/year} \times (1 \text{ ac-ft}/325,851 \text{ gallons}) = 0.019 \text{ ac-ft/yr}$$

$$0.019 \text{ ac-ft/yr} \times 6 \text{ cabins} = 0.12 \text{ ac-ft/yr consumptive use.}$$

**Table 3:** Schedule of Estimated Total and Consumptive Use.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
<b>Total Diversion (acre-feet)</b>	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	<b>3.0</b>
<b>Consumptive Use for 6 Cabins (acre-feet)</b>	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	<b>0.12</b>

#### **Four Statutory Tests**

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

#### **Beneficial Use**

In accordance with RCW 90.54.020(1), the proposed appropriation for group domestic indoor use would be a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion is supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

#### **Availability**

The two subject unnamed springs have provided the cabin community's water supply for over 30 years. The diversion points are located on these two unnamed springs which discharge directly to Rimrock Lake.

The appropriation proposed under the subject application would be water budget neutral by dedicating 0.12 ac-ft/yr of consumptive use available from Ecology's Cabin Owner Mitigation Program. Month-by-month mitigation is offered to account for the project's indoor only use during the irrigation season (April 1 – October 31). Out-of-season (November 1 – March 31) use and/or potential carry over impacts to instream flows would be mitigated through the USBR-Ecology Water Storage and Exchange Contract.

#### **Potential for Impairment**

The proposed uses that are the subject of this application would be water budget neutral with respect to TWSA by dedicating 0.12 ac-ft/yr from Ecology's water bank used for the Cabin Owner Mitigation Program. Month-by-month scheduling accounts for the project's indoor-only use during the irrigation



season (April 1 – October 31). Out-of-season indoor-only use (November 1 – March 31) and potential carry over impacts to instream flows would be mitigated through the USBR-Ecology Storage Contract. This mitigation water would be managed to offset any impacts to TWSA and to Rimrock Lake.

Since the springs are not part of a fish bearing water course and the use would be mitigated, the new use is not taking flow away from Endangered Species Act (ESA)-listed species. Therefore, the requirements associated with the USBR-Ecology Storage Contract will be met, and assignment of 0.12 acre-feet is appropriate since flow reduction resulting from the new uses is below the consultation threshold in paragraph 18(b) of the contract.

The Yakama Nation holds a time immemorial water right in its usual and accustomed hunting and fishing areas. While this time immemorial water right was not quantified by the Acquavella Adjudication, if flows drop to a point where fish and other aquatic life are affected, the Yakama Nation could make a call for their time immemorial water right. Local impairment could not be mitigated by assignment of Ecology's mitigation and water use under the subject application would be regulated.

### **Public Welfare**

The proposed appropriation would provide authorization for domestic supply to the rural cabin community, and would not be detrimental to the public welfare as provisioned.

### **CITATIONS**

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

USBR, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>.

### **CONCLUSIONS**

The conclusions based on the above investigation are as follows:

1. The proposed appropriation for single domestic use (indoor only) is a beneficial use of water;
2. The quantity of water requested is physically available at the springs and legally available through the purchase of mitigation credits;
3. The proposed appropriation will not impair senior water rights or local habitat; and
4. The proposed appropriation will not be detrimental to the public welfare.

### **RECOMMENDATION**

Based on the information presented above, the author recommends that a temporary permit be authorized (until the Yakima Superior Court Adjudication is complete) to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this report.

#### **Purpose of Use and Authorized Quantities**

0.06 cfs, 3.0 ac-ft/yr for year round group domestic use.

**Point of Diversion**

S½NE¼, Section 5, T. 13 N., R. 13 E.W.M., Yakima County.

**Place of Use**

Lots 12 through 17 of the West Russell Creek Summer Home Group within Section 4, T. 13 N., R. 13 E.W.M., Yakima County.

Report by: \_\_\_\_\_  
Jacquelyn M. Metcalfe, Permit Writer Date

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West Russell Creek Summer Homes  
S4-27116  
T13N/R13E  
WRIA 38 - Naches



Based on ESRI US Topographic Maps



Map Date: 8/27/2015



**Comment:**

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



**Legend**

- |  |                               |  |           |
|--|-------------------------------|--|-----------|
|  | Authorized Place of Use       |  | Townships |
|  | Authorized Point of Diversion |  | Sections  |
|  |                               |  | WRIA      |
|  |                               |  | Countries |

Based on ESRI US Topographic Maps